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12 Attorneys for the United States

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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

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20 UNITED STATES OF AMERICA, } No. CR 03-20010 RMW
21 Plaintiff, } STIPULATION AND []
22 v. } ORDER MODIFYING BRIEFING
23 KEVIN DUGAN, } SCHEDULE AND RESCHEDULING
24 Defendant. } MOTION HEARING DATE

25 This matter is currently set for a hearing on Monday, October 6, 2008 on
26 defendant's various motions for a new trial. This matter is also currently scheduled for
27 the defendant's sentencing on Monday, November 3, 2008. The parties now jointly
28 request that the briefing schedule and hearing date for the defendant's new trial motions
be pushed back approximately a week. This proposed continuance will not affect the
currently scheduled sentencing date of November 3, 2008. The reasons for the proposed
continuance of the briefing schedule and the motion hearing date are as follows:

29 1. On August 29, 2008, defendant's latest defense counsel (Dennis Riordan and
30 Donald Horgan) filed a 30 page supplemental memorandum in support of defendant's

31 STIPULATION AND [] ORDER
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1 motion for a new trial. This supplemental memorandum raised several arguments,
2 including a claim that 18 U.S.C. 922(g)(3)(the federal statute which criminalizes being an
3 addict of unlawful drug user in possession of a firearm) is unconstitutional.

4 2. The defendant's supplemental memorandum also raises issues regarding the
5 sufficiency of the evidence presented at trial which will require government counsel to re-
6 view the trial transcript. In the process of conducting this review, undersigned
7 government counsel determined that the government was missing a volume of the trial
8 transcript which included approximately 190 pages of the government's case-in-chief.
9 Government counsel only received a copy of this transcript for the first time yesterday.

10 3. In light of the above, the government respectfully requests an additional week
11 beyond the current September 19, 2008 due date to prepare its response to the defendant's
12 supplemental memorandum. Defense counsel do not object to this proposed schedule
13 modification as long as they receive calendar 10 days to file a reply to the government's
14 opposition to the defendant's supplemental memorandum. It is the parties' understanding
15 that the Court is available on October 14, 2008.

16 In light of the above, the parties agree, and the Court finds and holds, as follows:

17 1. The government's opposition to the defendant's supplemental memorandum in
18 support of defendant's motion for a new trial is due on Friday, September 26, 2008.

19 2. The defense's reply brief in support of its supplemental memorandum/motion
20 for new trial is due on Monday, October 6, 2008.

21 3. The hearing on defendant's various new trial motions is to be held on Tuesday,
22 October 14, 2008 at 9:00 a.m.

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1 4. The currently scheduled sentencing date of November 3, 2008 at 9:00 a.m. shall
2 remain in effect.

3 SO STIPULATED:

4 DATED: 9/17/08

/s/

DONALD M. HORGAN
Defense Counsel

7 DATED: 9/17/08

/s/

JOSEPH A. FAZIOLI
Assistant United States Attorney

9 IT IS SO ORDERED.

10 DATED: 9/24/08

Ronald M. Whyte
RONALD M. WHYTE
UNITED STATES DISTRICT JUDGE